United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

Docket No. 76-6178

To be Argued By:
John W. Tabner

UNITED STATES COURT OF APPEALS

B

FOR THE SECOND CIRCUIT

NORMAN M. CAMPBELL,

Plaintiff-Appellant

-against-

F. DAVID MATHEWS, Secretary of Health, Education and Welfare and Housing and Urban Development, TOWN OF COLONIE, William K. Sanford, Supervisor,

Defendants-Appellees.

UNITED STATES COURT OF APPEALS
FILED
JAN 12 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

Appeal from the United States District Court
For the Northern District of New York

BRIEF FOR TOWN OF COLONIE, DEFENDANT-APPELLEE

ROBERT P. HEYWOOD
TABNER, CARLSON, DAFFNER AND FARRELL
Of Counsel
Attorneys for Town of Colonie
90 State Street
Albany, New York 12207
(518) 436-7643

Printed by NATIONAL LEGAL SUPPLY, INC., Albany, N.Y. 12207

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES CITED

PAGE

STATUTES, RULES AND REGULATIONS

In The

United States Court of Appeals

For the Second Circuit

NORMAN M. CAMPBELL,

Plaintiff-Appellant,

-against-

F. DAVID MATHEWS, Secretary of Health, Education and Welfare and Housing and Urban Development, TOWN OF COLONIE, William K. Sanford, Supervisor,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of New York

BRIEF FOR THE TOWN OF COLONIE, DEFENDANT-APPELLEE

STATEMENT OF ISSUES

ISSUE NO. 1:

DOES PLAINTIFF'S COMPLAINT ESTABLISH FEDERAL JURISDICTION OVER THE SUBJECT MATTER OF HIS CLAIM?

ISSUE NO. 2:

DOES PLAINTIFF'S COMPLAINT STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED?

STATEMENT OF THE CASE

For the sake of brevity, and in accordance with the provision of F.R.A.P. Rule 28(i), the defendant Town of Colonie adopts by reference herein the Statement of the Case contained in the brief filed on behalf of the federal defendants. Additional comment on the condemnation proceeding now pending in New York Supreme Court is appropriate, however, since it appears that plaintiff intends to challenge in federal court the purpose of the state court proceeding.

Prior to the institution of said proceeding, representatives of the Town of Colonie made several unsuccessful attempts to negotiate a price with Mr. Campbell for the purchase of a temporary easement across his property. In accordance with Article II of the New York Condemnation Law, a formal offer to purchase said easement for the price of $378. was made on June 24, 1976. On the same date, a notice of petition and petition was served upon Mr. Campbell commencing the state proceeding.

On June 22, 1976, oral argument was heard by the Hon. Robert C. Williams, Justice of the Supreme Court, on a Town motion for an order permitting entry upon Mr. Campbell's lands during the pendency of the proceeding. Mr. Campbell appeared pro se at that time and submitted a written statement in opposition to the petition. The Town's motion was granted in a decision by Judge Williams dated August 11, 1976, subject

to the depositing of the sum of $500. with the court to the credit of the proceeding. Assuming orderly disposition in accordance with the Condemnation Law, a trial of any issues will be conducted and Commissioners of Appraisal will be appointed to determine just compensation for Mr. Campbell's property interest.

ARGUMENT

POINT I

PLAINTIFF'S COMPLAINT FAILS TO ESTABLISH FEDERAL JURISDICTION OF THE SUBJECT MATTER OF HIS CLAIM.

Rule 8(a) of the Federal Rules of Civil Procedure requires that a pleading contain "a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it." The reason for the rule is clear:

> "United States District Courts are courts of limited jurisdiction. Creatures of statute, they have only such jurisdiction as the statutes expressly confer, and this jurisdiction must always affirmatively appear." Le Meux Bros., Inc. v. Tremont Lumber Co., 140 F. 2d 387, 389 (C.A. 5th, 1944).

See, also, Bouman v. White, 388 F. 2d 756, 760 (C.A. 4th, 1968), cert. den. 89 S. Ct. 214, 393 U.S. 891, 21 L. Ed. 2d 172.

In the instant matter, the original complaint contains no affirmative allegation as to the basis for jurisdiction. The amended complaint, which was served during oral argument on the motion to dismiss, refers to 18 U.S.C. § 1001, pertaining to false statements made within the jurisdiction of a federal agency or department. The only other reference to jurisdiction is contained on page "A" of Mr. Campbell's brief where he states that "this appeal and the complaint is based on the Fourth Amendment to the United States Constitution." Diversity of citizenship does not exist in fact nor is it alleged. Apparently, therefore, Mr. Campbell relies upon "federal question" jurisdiction under 28 U.S.C. § 1331.

With respect to Section 1001 of Title 18, it is apparent, however, that his reliance is misplaced. Said statute is a federal criminal statute to be enforced by the U.S. Department of Justice in a criminal proceeding. By no extension of the legislative intent, could the statute be applied in a civil action by a private citizen to challenge a state condemnation proceeding or the federal funding of a public sewer project. In any event, there is no indication in the complaint as to how the statute was violated or by whom.

Mr. Campbell's reliance upon the Fourth Amendment is likewise inappropriate since the well-recognized purpose of the Amendment is to protect the privacy of individuals against unreasonable searches and seizures of their property for the purposes of criminal prosecution or similar sanctions. Chimel v. California, 89 S. Ct. 2034, 395 U.S. 752, 23 L. Ed. 2d 685 (1969); Davis v. Mississippi, 89 S. Ct. 1394, 394 U.S. 721, 22 L. Ed. 2d 676 (1969). The Amendment is not a prohibition to the lawful condemnation of real property by a sovereign state for a public purpose and just compensation.

Admittedly, the court may examine the entire complaint to ascertain whether there is a federal jurisdiction, and not merely what purports to be the jurisdictional statement. It is evident, however, that not even the most liberal construction of Mr. Campbell's complaint or amended complaint could support a question arising under a federal statute or the federal Constitution. Mere argument or inference is insufficient to confer jurisdiction upon the federal courts. Thomas v. Ohio State Univ., 25 S. Ct. 24, 28 195 U.S. 207, 218, 49 L. Ed. 160 (1904); Bufalino v. Michigan Bell Tel. Co., 404 F. 2d 1023 (C.A. 6th, 1968), cert. den. 89 S. Ct. 1468, 394 U.S. 987, 22 L. Ed. 2d 763.

Even assuming that a ground for federal jurisdiction can be pieced together from Mr. Campbell's various pleadings, there remains the underlying consideration that a state court proceeding is still pending. The legislative intent behind

the federal anti-injunction statute (28 U.S.C. 2283), the various absention doctrines, and the case law thereunder all dictate that the federal courts should not intervene in this matter until the state proceeding has been resolved. See, Younger v. Harris, 91 S. Ct. 746, 401 U.S. 37, 27 L. Ed. 2d 669 (1971); and, Mitchum v. Foster, 92 S. Ct. 2151, 407 U.S. 225, 32 L. Ed. 2d 705 (1972).

POINT II

PLAINTIFF'S COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

Rule 8(a) also requires the pleader to set forth "a short and plain statement of the claim showing that (he) is entitled to relief." Although the proper test for determining the sufficiency of a complaint under this Rule is whether the allegations contained in the pleading provide for relief under any possible theory, acceptance of all the allegations contained in Mr. Campbell's complaint as true does not assist him in framing a recognizable claim for relief. As argued in Point I above, the facts alleged by Mr. Campbell are totally unrelated to the federal laws which he has attempted to invoke.

The court is not obligated to assist the plaintiff in composing a sufficient complaint, nor would it be proper for the court to do so where the insufficiency of the complaint

is due to the total absence of federal claim, rather than poor draftsmanship. The conclusion of the 7th Circuit in Sutton v. Eastern Viavi Co., 138 F. 2d 959, 960 (1943) is particularly instructive:

> "No claim for relief is stated if the complaint pleads facts insufficient to show that a legal wrong has been committed, or omits an averment necessary to establish the wrong, or fails so to link the parties with the wrong as to entitle the plaintiff to redress."

CONCLUSION

The order and judgment of the United States District Court for the Northern District of New York should in all respects be affirmed.

Respectfully submitted,

ROBERT P. HEYWOOD,
TABNER, CARLSON, DAFFNER AND FARRELL
Of Counsel
Attorneys for Town of Colonie
90 State Street
Albany, New York 12207
Tel: (518) 436-7643